



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 27 2018

Joe Dooling

Helena, Montana 59602

RE: MUR 7250
Rob Quist for Montana, *et al.*

Dear Mr. Dooling:

On July 17, 2018, the Federal Election Commission reviewed the allegations in your complaint dated May 24, 2017, and found that on the basis of the information provided in your complaint and information provided by the Respondents, there is no reason to believe Rob Quist and Rob Quist for Montana and Linda Howard in her official capacity as treasurer violated 52 U.S.C. § 30116(f) or that the Montana Writers for Public Lands and Rick Bass in his official capacity as treasurer ("MWPL") violated 52 U.S.C. §§ 30104(b) and 30116(a). Moreover, the Commission dismissed the allegations that MWPL violated 52 U.S.C. §§ 30103(a), 30104(g), and 30120(a) and (c). Finally, the Commission found no reason to believe that the 93 individual named Respondents violated the Act. Accordingly, on July 17, 2018, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analysis, which more fully explains the Commission's findings is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa Stevenson
Acting General Counsel

BY: 
Mark Allen
Assistant General Counsel

Enclosure: Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Rob Quist **MUR 7250**
6 Rob Quist for Montana and Linda Howard
7 in her official capacity as treasurer
8 Montana Writers for Public Lands and Rick
9 Bass in his official capacity as treasurer
10 Individual Respondents¹

11
12 **I. INTRODUCTION**

13 This matter was generated by a Complaint filed with the Federal Election Commission
14 alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by
15 Rob Quist, Rob Quist for Montana and Linda Howard in her official capacity as treasurer
16 (collectively "Committee"), Montana Writers for Public Lands and Rick Bass in his official
17 capacity as treasurer ("MWPL"), and 93 individual respondents who allegedly made
18 contributions to disseminate a 24-page newspaper insert, either a monetary contribution or an in-
19 kind contribution in the form of an essay, poem, or photograph.

20 The Complaint alleges that the insert was coordinated with the Committee, resulting in an
21 excessive contribution. It further alleges that the individual writers and financial backers of the
22 insert failed to register as a federal political committee, failed to disclose contributions and an
23 independent expenditure, and failed to include a proper disclaimer.

¹ Mark R. Albrecht, Sandra Alcosser, Maggie Anderson, Elise Atchinson, Brady Banks, Marc Beaudin, Bill Berg, Colette Berg, Jolene Brink, David Brooks, James Lee Burke, Kevin Canty, Russell Chatham, Diane Conradi, Nancy S. Cook, Seabring Davis, Chris Dombrowski, Scott Dreher, David James Duncan, Cristina Eisenberg, Tess Fahlgreen, Shann Ray Ferch, Amanda Fortini, Ryan Friel, Steven Gnam, Jessie Grossman, Tami Haaland, Will Haines, Leslie Hayes, Max Hjortsberg, Corrie Holloway, Matt Holloway, Lowell Jaeger, Michael R. Johnson, Allen M. Jones, Greg Keeler, Walter Kim, Keith Kratzer, Albert W. Lindler, Timothy P. Linehan, Ben Long, Tom McGuane, Scott McMillion, Mary Sheehy Moe, Tara Morrison, Tom Murphy, Miles Nolte, Cindy Owings, Monica Pastor, Andrea Peacock, Doug Peacock, Mary Person, Peter Picard, Torsten Pieper, David Quammen, Russell Rowland, Bob Schleicher, Brian Schott, Lyndsay Schott, Mark Schulein, Dwight B. Short, Lois S. Short, Robert Stubblefield, Todd Tanner, Toby Thompson, Carter G. Walker, Kimberly Walker, Ruth Striegel Weissman, Walt Weissman, Alan Weltzien, Anne Colston Wentz, Kipp Wessel, Richard S. Wheeler, Todd Wilkinson, Louisa Willcox, and John Patrick "Pat" Williams.

1 **II. FACTS**

2 In the run-up to the May 25, 2017, special election for the Montana U.S. House seat,² a
3 group of individuals who describe themselves as advocates for Montana’s public lands compiled
4 a 24-page collection of essays, poems, and nature photographs that appeared as a paid insert in
5 three Sunday newspapers in Montana on May 21, 2017.³ The insert references the May 25
6 special election in several places. The introduction on the first page describes the insert as
7 “endorsing Democratic House of Representatives candidate Rob Quist’s position” on the public
8 lands issue.⁴ One essay, “Veterans for Rob Quist,” states, “Our key battle today is to elect Rob
9 Quist to Congress.”⁵ The last page of the insert states in large letters, “TAKE YOUR STAND in
10 Montana’s Special Election, May 25, 2017, VOTE! Vote to Protect Montana’s Public Lands!”⁶
11 The insert displays the names of its “contributors” (writers) and “sponsors” (monetary
12 contributors) and a website address, www.wetakeourstand.org.⁷

13 On May 20, 2017, the day before the insert was disseminated, an article in the *Bozeman*
14 *Daily Chronicle* described the insert and included an interview with Seabring Davis, one of its
15 organizers. The article included the following statement: “The insert’s distribution areas in

2 Ryan Zinke vacated the seat when he was confirmed as Secretary of the Interior in early 2017.

3 Compl. at 2-3 (May 24, 2017); MWPL Resp., Seabring Davis Decl. ¶ 2 (July 21, 2017).

4 Although the MWPL Response claims to attach the insert, it was not included.

5 Insert at 17.

6 *Id.* at 24.

7 *Id.* at 1, 3. The website address appears in small print at the bottom of every page except page 1, where it appears in the middle of the page.

1 southwest and northwest Montana are places where, *consulting with the Quist campaign*, the
2 group thought they were likely to reach undecided voters, Davis said.”⁸

3 On May 22, 2017, the day after the insert’s publication, Davis and Rick Bass registered
4 MWPL with the Commission as a multi-candidate political committee.⁹ On June 24, 2017,
5 MWPL filed an Independent Expenditure Report with the Commission disclosing \$9,237 in costs
6 for the insert and also filed a 30-Day Post-Election Report disclosing its receipts and
7 disbursements.¹⁰ MWPL disclosed receiving a total of \$9,915 in contributions, \$5,200 of which
8 were itemized.¹¹ The largest contributions were three \$1,000 contributions.¹²

9 **III. ANALYSIS**

10 **A. Alleged Coordination**

11 Based on the newspaper article, the Complaint alleges that because the individual
12 Respondents paid for the insert and Davis and the Quist campaign “consult[ed]” on placement of
13 the insert, the insert is coordinated, resulting in an excessive, in-kind contribution by the

⁸ Compl. at 3 (quoting Eric Dietrich, *Montana Writers, Worried About Public Lands, to Publish Pro-Quist Insert*, BOZEMAN DAILY CHRONICLE (May 20, 2017) (emphasis added), https://www.bozemandailychronicle.com/news/politics/montana-writers-worried-about-public-lands-to-publish-pro-quist/article_4d9020e0-ef77-5d55-a8ff-84e8766be2ba.html).

⁹ See MWPL Statement of Organization (May 22, 2017), <http://docquery.fec.gov/pdf/098/201705229055131098/201705229055131098.pdf>. MWPL’s Statement identifies Bass as treasurer. The Complaint was filed on May 24, 2017, two days after the Committee registered with the Commission.

¹⁰ See <http://docquery.fec.gov/pdf/640/201706249065372640/201706249065372640.pdf> (“Independent Expenditure Report”) and <http://docquery.fec.gov/pdf/642/201706249065372642/201706249065372642.pdf> (“30-Day Post-Election Report”).

¹¹ See 30-Day Post-Election Report at 3.

¹² See *id.* at 8.

1 individual Respondents to Quist.¹³ The Complaint also alleges that the insert is an “express
2 advocacy endorsement.”¹⁴

3 In a declaration MWPL submitted with its Response, Davis, who describes herself as one
4 of three organizers of MWPL and its current Assistant Treasurer, acknowledges that she spoke
5 with the newspaper reporter about the insert but attests that she did not tell the reporter that
6 MWPL had “consulted” with the Quist campaign.¹⁵ She states that she told the reporter that she
7 had discussed the publication of the insert with a Quist campaign volunteer.¹⁶ Davis explains
8 that the volunteer, Joanne Gardner, lives near her and approached her about donating to a
9 fundraising event Gardner was hosting.¹⁷ Davis attests that she mentioned to Gardner the plan to
10 distribute the insert, and Gardner suggested that it be distributed in and near Great Falls,
11 Montana.¹⁸

12 MWPL and Davis assert that Gardner did not indicate that she represented the Quist
13 campaign.¹⁹ MWPL further states that it rejected Gardner’s suggestion to disseminate the insert
14 in Great Falls, and that MWPL made its decisions based on its budget and internal
15 deliberations.²⁰

¹³ Compl. at 2-6.

¹⁴ *Id.* at 6.

¹⁵ MWPL Resp., Davis Decl. ¶ 11.

¹⁶ *Id.*

¹⁷ *Id.* ¶ 12.

¹⁸ *Id.*

¹⁹ MWPL Resp. at 5; Davis Decl. ¶ 12.

²⁰ MWPL Resp. at 5-6; Davis Decl. ¶ 13 (stating that MWPL “did not take Ms. Gardner’s suggestion.”).

1 The Committee asserts that Gardner was a campaign volunteer but “did not play any
2 significant role in the campaign,” and that she was not an agent of or authorized by Quist or the
3 Committee to act for them regarding the insert.²¹ The Committee further states that neither
4 Quist, the Committee, nor an agent of either coordinated with Davis or any other party involved
5 with the creation or dissemination of the insert.²²

6 The Act defines a contribution as “any gift, subscription, loan, advance, or deposit of
7 money or anything of value made by any person for the purpose of influencing any election for
8 Federal office.”²³ The term “anything of value” includes all in-kind contributions.²⁴
9 Expenditures that are coordinated with a candidate are treated as contributions to the candidate.²⁵

10 For purposes of the Act, “coordinated” means made in cooperation, consultation, or
11 concert with, or at the request or suggestion of, a candidate or a candidate’s authorized
12 committee.²⁶ The Commission’s regulations provide a three-part test for determining when a
13 communication is a coordinated expenditure, which is treated as an in-kind contribution.²⁷
14 The communication must: (1) be paid for by a third party; (2) satisfy one of the “content”
15 standards listed in 11 C.F.R. § 109.21(c); and (3) satisfy one of the “conduct” standards listed in

²¹ Committee Resp. at 3, 5 (July 20, 2017).

²² *Id.* at 3.

²³ 52 U.S.C. § 30101(8)(A).

²⁴ 11 C.F.R. § 100.52(d)(1).

²⁵ 52 U.S.C. § 30116(a)(7)(B).

²⁶ 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30116(a)(7)(B)(i).

²⁷ 11 C.F.R. § 109.21(a)-(b).

1 11 C.F.R. § 109.21(d).²⁸ All three prongs must be satisfied for a communication to be
2 considered coordinated under the regulations.²⁹

3 Three conduct standards may be relevant here: “request or suggestion” is satisfied if the
4 communication is created, produced, or distributed at the request or suggestion of the candidate
5 or authorized committee, or if the communication is created, produced, or distributed at the
6 request or suggestion of a person paying for the communication and the candidate or authorized
7 committee assents to the payor’s suggestion regarding the communication;³⁰ “material
8 involvement” is satisfied if a candidate or authorized committee is materially involved in
9 decisions regarding the intended audience for the communication or the means or mode of the
10 communication or the specific media outlet used for the communication;³¹ and “substantial
11 discussion” is satisfied if the candidate or committee conveyed to the payor of a communication
12 information about the candidate’s plans, projects, activities, or needs, and that information is
13 material to the communication’s creation, production, or distribution.³²

14 The record indicates Quist volunteer Gardner hosted a fundraiser and may have
15 performed additional volunteer work for the Committee.³³ While speaking with Davis about
16 making a contribution, Gardner, who lives near Davis, suggested that MWPL’s insert should be

²⁸ *Id.* The six types of conduct that satisfy the conduct standard are: (1) request or suggestion; (2) material involvement; (3) substantial discussion; (4) common vendor; (5) former employee; and (6) republication. 11 C.F.R. § 109.21(d).

²⁹ 11 C.F.R. § 109.21(a)(1)-(3).

³⁰ 11 C.F.R. § 109.21(d)(1).

³¹ 11 C.F.R. § 109.21(d)(2)(ii-iv).

³² 11 C.F.R. § 109.21(d)(3).

³³ Committee Resp. at 3; *see also* Davis Decl. ¶¶ 11-12.

1 disseminated in Great Falls. This available information does not indicate that Gardner was an
2 agent of the candidate or committee such that her comment could be imputed to Quist or the
3 Committee.³⁴ The Committee states that no communication Gardner had with Davis or with
4 anyone regarding the insert was authorized by Quist or the Committee, and we have no
5 information to the contrary.³⁵ But even if the available information indicated that Gardner was
6 an agent of the candidate or committee, MWPL did not disseminate the insert as Gardner
7 suggested. Thus, it does not appear that the “request or suggestion” standard of the conduct
8 prong is satisfied here.

9 The “material involvement” and “substantial discussion” conduct standards both rely on
10 materiality, that is, involvement in decision-making regarding a communication or conveying
11 information that is materially important to that communication. Based on the record, neither
12 materiality requirement is satisfied. The Commission has explained that being “materially
13 involved in decisions” and “material for purposes of the substantial discussion standard” does
14 not encompass all interactions, only those that are important to the communication.³⁶ Although
15 discussions about a communication’s dissemination could satisfy the conduct prong,³⁷ Davis
16 attests that the Committee disseminated the insert in Bozeman and Kalispell “based on our

³⁴ See 11 C.F.R. § 109.3 (defining agent as “any person who has actual authority, either express or implied,” to engage in listed activities).

³⁵ Committee Resp. at 3, 5 (Gardner did not have authority); *see also* Davis Decl. ¶ 12 (Gardner did not indicate that she was acting on behalf of Quist or Committee). Gardner does not appear to have ever been paid by the Committee, according to its disclosure reports.

³⁶ Explanation and Justification for Regulations on Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 433-34 (Feb. 3, 2003) (“E&J”).

³⁷ The E&J explains that if a candidate informed a third-party payor about its plans to run an ad on a certain television station at a certain time, and then the payor schedules its ads to complement the candidate’s schedule, there is an inference of material involvement. *See* E&J at 434.

1 available budget and our own internal discussions,”³⁸ and we have no information to the
2 contrary. Further, the insert did not run in Great Falls, where Gardner suggested, which bolsters
3 the conclusion that Gardner’s comments were not material to the Committee’s decision-making
4 or communications strategy. Thus, even if the available information suggested that an agency
5 relationship existed between Gardner and Quist or the Committee, it appears that Gardner was
6 not involved in decision-making regarding, nor conveyed information that was materially
7 important to, the communication. Therefore, the Commission finds no reason to believe that
8 MWPL made, or that the Committee accepted, an excessive contribution in the form of a
9 coordinated communication.

10 **B. Alleged Reporting and Disclaimer Violations**

11 The Complaint alleges that Respondents violated several reporting provisions of the Act,
12 including that the individual Respondents failed to register as a political committee and disclose
13 their contributors, file an independent expenditure report, and include a proper disclaimer on the
14 insert.³⁹ MWPL acknowledges that it may have filed its Statement of Organization (“SOO”) and
15 Independent Expenditure Report late, but stresses that it is a small, new committee, and it
16 attempted to comply with the Act and regulations.⁴⁰

³⁸ MWPL Resp., Davis Decl. ¶ 13.

³⁹ Compl. at 2-6.

⁴⁰ MWPL Resp. at 6-7.

1 1. Statement of Organization

2 Committees have ten days to file a SOO after becoming a political committee within the
3 meaning of the Act.⁴¹ MWPL registered with the Commission on May 22, 2017, the day after
4 the insert ran and two days before the Complaint was filed. MWPL received \$1,500 in
5 contributions by May 3, 2017.⁴² Thus, assuming MWPL's major purpose was the nomination or
6 election of federal candidates,⁴³ MWPL's SOO was due by May 13, 2017, and MWPL filed it
7 nine days late. Again, assuming MWPL was required to file an SOO and filed it late, the late
8 filing did not cause MWPL to file any disclosure report late.⁴⁴ Thus, the Commission exercises
9 its prosecutorial discretion and dismisses the allegation that MWPL violated 52 U.S.C.
10 § 30103(a) by untimely filing its SOO.⁴⁵

⁴¹ 52 U.S.C. § 30103(a).

⁴² See 30-Day Post-Election Report at 6, 8.

⁴³ MWPL now argues that it may not have needed to register as a political committee because its major purpose is not the nomination or election of a federal candidate, and that it registered only after being warned by a friend that it "may" have had to register. See MWPL Resp. at 6; Davis Decl. ¶ 3. The Act and Commission regulations define a "political committee" as "any committee, club, association or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5. In *Buckley v. Valeo*, the Supreme Court held that defining political committee status "only in terms of the annual amount of 'contributions' and 'expenditures'" might be overbroad, reaching "groups engaged purely in issue discussion." 424 U.S. 1, 79 (1976). To cure that infirmity, the Court concluded that the term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Id.* (emphasis added).

⁴⁴ See, e.g., MUR 6815 (Scott Brown) (Commission dismissed allegation that Statements of Candidacy and Organization were late where first required disclosure report would have been the same and was timely filed); MUR 6533 (Perry Haney) (same regarding Statement of Candidacy).

⁴⁵ See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 2. Independent Expenditure Report.

2 An independent expenditure is an expenditure that expressly advocates the election or
3 defeat of a clearly identified federal candidate, and is not made in concert or cooperation with or
4 at the request or suggestion of such candidate, the candidate's authorized political committee, or
5 their agents.⁴⁶ In addition to a political committee's regular reporting obligations, the Act further
6 requires additional independent expenditure reporting within 24 hours of the expenditure when a
7 person makes or contracts to make independent expenditures aggregating \$1,000 or more fewer
8 than 20 days, but more than 24 hours, before the date of an election.⁴⁷

9 The record indicates that the insert — published on May 21, 2017 — was not disclosed
10 on a 24-Hour Independent Expenditure Report until June 24, 2017, following Commission notice
11 to MWPL that a complaint had been filed against it.⁴⁸ MWPL admits that the filing was not
12 made within 24 hours of the insert's publication, but states it promptly filed an Independent
13 Expenditure Report upon learning of such requirement.⁴⁹

14 The Commission dismisses this violation based on the relatively modest activity at issue
15 and the remedial actions already taken.

⁴⁶ 52 U.S.C. § 30101(17); *see also* 11 C.F.R. § 100.22(a), (b) (definition of "expressly advocating").

⁴⁷ *See* 52 U.S.C. § 30104(g); 11 C.F.R. § 109.10(d).

⁴⁸ Compl. at 6.

⁴⁹ MWPL Resp. at 7, 8.

1 3. Disclaimer

2 The Complaint further alleges that the insert failed to include a proper disclaimer.⁵⁰
3 MWPL does not specifically address this allegation, although it notes that its website address
4 appears on every page of the insert.⁵¹

5 The Act and regulations require disclaimers on public communications by political
6 committees.⁵² Communications that are not authorized by a candidate are required to clearly
7 state the name and street address, telephone number, or web address of the person who paid for
8 the communication, and to state that the communication was not authorized by any candidate or
9 candidate's committee.⁵³ The disclaimer must be of sufficient type size and in a printed box set
10 apart from the rest of the communication.⁵⁴

11 Although MWPL's insert includes MWPL's website address on every page, there is no
12 statement that the insert was not authorized by any candidate or candidate's committee, and the
13 website address is not contained in a printed box set apart from the rest of the communication.
14 Thus, if MWPL is a political committee, it violated the Act and regulations by failing to include
15 a complete disclaimer.

16 Nevertheless, the Commission dismisses this allegation. In a number of past matters, the
17 Commission has not pursued disclaimer violations where the disclaimer was incomplete but

⁵⁰ Compl. at 5.

⁵¹ MWPL Resp. at 2.

⁵² 52 U.S.C. § 30120(a), (c); 11 C.F.R. § 110.11(a)-(c).

⁵³ 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

⁵⁴ 52 U.S.C. § 30120(c); 11 C.F.R. § 110.11(b)(1), (c)(1), (2).

1 contained sufficient information to identify the entity responsible for it.⁵⁵ Here, MWPL's name
2 is on the first page of the insert and its website address is printed on every page.

3 **C. Individual Respondents**

4 The Complaint appears to allege that the 93 individual Respondents failed to disclose
5 their in-kind contributions — essays, poems, and photographs — to the Committee.⁵⁶ The
6 Complaint asserts that these contributions were anonymous or excessive.⁵⁷ MWPL and the
7 individual Respondents who submitted pieces for the insert (collectively "Artist Respondents")
8 assert that the Artist Respondents' submissions were not contributions because the Artist
9 Respondents were not paid for them.⁵⁸ The Artist Respondents did not make contributions to
10 MWPL because the value of services provided without compensation by any individual who
11 volunteers on behalf of a political committee is not a contribution under the Act.⁵⁹ As to the
12 individual Respondents who made direct contributions, it does not appear that such individual
13 contributors have a reporting obligation under the Act. Additionally, MWPL registered with the

⁵⁵ See, e.g., MUR 6683 (Fort Bend County Democratic Party) (dismissing disclaimer violation and sending caution letter where disclaimer was incomplete but contained some information identifying the payor). Like MWPL, which spent \$9,237 on the insert, the MUR 6683 respondent spent a modest amount on the communication at issue. Factual & Legal Analysis at 6-7, MUR 6683.

⁵⁶ Compl. at 5.

⁵⁷ *Id.* at 3-4.

⁵⁸ MWPL Resp. at 2; see also Artist Respondent Responses.

⁵⁹ See 52 U.S.C. § 30101(8)(B)(i); see also Factual & Legal Analysis at 2-3, MURs 5987, 5995 & 6015 (Sir Elton John) (musical artist's uncompensated performance at Hillary Clinton fundraiser was not a contribution).

- 1 Commission as a multi-candidate committee, and a review of MWPL's disclosure report
- 2 indicates that none of the direct contributions exceeded the limits for such a committee.⁶⁰
- 3 Therefore, the Commission finds no reason to believe that the individual Respondents
- 4 violated the Act.

⁶⁰ See Compl. at 3. To the extent the Complaint alleges that MWPL may have failed to disclose its contributors, in fact, MWPL timely disclosed its contributors in a 30-Day Post-Election Report. See 30-Day Post Election Report.